

July 27, 2004

KITSAP COUNTY DEMOCRATIC CENTRAL COMMITTEE
ATTN: JOHN D. MORGAN, CHAIR
PO BOX 27
SILVERDALE WA 98383

Subject: Complaint Filed Against The American Dream Coalition and Michael
Svardh - PDC Case No. 03-079

Dear Mr. Morgan:

The Public Disclosure Commission staff has completed its investigation of your complaint received November 1, 2002 alleging that The American Dream Coalition (ADC) and Michael Svardh sponsored political advertising that contained false statements against Tim Botkin, a candidate for Kitsap County Commissioner in 2002, and that the ADC failed to timely report its activities in violation of RCW 42.17. I apologize for the length of time it has taken to complete our investigation.

The PDC staff reviewed your allegations in light of the following statutes:

RCW 42.17.530 prohibits a person from sponsoring with actual malice political advertising that contains a false statement of material fact about a candidate for public office. "Actual malice" means to act with knowledge of falsity or with reckless disregard as to truth or falsity. Any violation must be proven by clear and convincing evidence.

RCW 42.17.080 and 42.17.090 require political committees to file frequent and detailed reports of contribution and expenditure activities, including the disclosure of political advertising.

You alleged that the ADC and Michael Svardh violated RCW 42.17.530 by sponsoring political advertising that contained false statements of material fact against Tim Botkin.

We found the statements in the advertisements sponsored by the ADC and Michael Svardh were: 1) matters of opinion and not statements of fact; 2) statements that were not made directly against a candidate for public office; or 3) statements that even if false were not a material fact, or were not made with actual malice. We found the following with regard to each of the nine alleged false statements listed in your complaint:

- Alleged False Statement #1: “Botkin’s term in office nets a \$17.5 million loss of County funds. Botkin’s administration has depleted the County’s \$15,000,000 reserve funds.” Neither of these statements were made against a candidate for public office. The first statement was made about an elected official’s “*term in office*” which includes the activities of the entire Commission. The second statement was made about the administration of Kitsap County government and did not make a statement directly about Mr. Botkin. Thus, these statements are not covered by RCW 42.17.530.
- Alleged False Statement #2: “the County is an additional \$2,500,000 in debt.” This is not a statement about a candidate. While the definition of “debt” is subject to interpretation, it is not relevant since the statement is not against a candidate for public office. Therefore, the statement is not covered by RCW 42.17.530.
- Alleged False Statement #3: “Botkin has stated that he will not cut funding for the Department of Community Development in the 2003 or 2004 budgets?” [the paper then describes personnel and software investments] “to improve the ability to regulate land use. Permits will not be processed any faster.” This alleged false statement was an opinion of the author as to how the permitting process would be affected within an agency of Kitsap County government. As such, it is not a false statement made against Tim Botkin. It is a statement of opinion about the personnel and operations of a local governmental agency that is not covered by RCW 42.17.530.
- Alleged False Statement #4: “A vote for Botkin is a vote for 24 hour satellite surveillance of your home”. This alleged false statement was the opinion of the author as to his understanding of the capabilities of LIDAR, and how the LIDAR equipment would be used by Kitsap County. LIDAR equipment is not a satellite, and is not capable of performing 24-hour surveillance of homes. However, the statement is Mr. Svard’s interpretation of the impact of the County using such equipment. Thus, it was not a false statement under RCW 42.17.530.

Alleged False Statement #5: “Botkin is proposing impact fees for single family homes that could top \$10,000/new house.” We found that the impact fee amounts discussed at Impact Fee Committee meetings were comprised of three separate fees: 1) school impact fees; 2) road impact fees; and 3) parks impact fees. Kitsap County was divided into three districts for the assessment of these three impact fees, thus there were three impact fee amounts for each of the three districts. The maximum impact fee proposed by the committee was \$8,558 for any one district for school, road and park impact fees. However, the highest proposed impact fee of each type, without regard to district, totaled more than \$10,000. Thus, there was not clear and convincing evidence that Mr. Svardh’s statement was false.

- Alleged False Statement #6: **“Botkin has personally worked to keep Silverdale unincorporated even though his “Smart Growth” logic would require it to be called an “urban area.”** Mr. Svardh relied on statements made by Mr. Botkin when discussing positions on “Smart Growth” in Kitsap County when making this statement. The statement represented Mr. Svardh’s opinion that Mr. Botkin was trying to keep Silverdale unincorporated through his positions on “Smart Growth”. Thus, it was a matter of opinion and not subject to RCW 42.17.530.
- Alleged False Statement #7: **“In preparation for more Smart Growth regulations the County has rezoned all of the unincorporated areas. The new zones have created a problem for those property owners.”** This alleged false statement is not a direct statement against a candidate for public office. Therefore, it is not subject to RCW 42.17.530.
- Alleged False Statement #8: **“A judge ruled that the Commissioners’ plan to move the county offices to Bremerton was illegal. That plan costs the County \$500,000.”** This alleged false statement is not a direct statement against a candidate for public office. It was directed toward Kitsap County Government. Therefore, it is not subject to RCW 42.17.530.
- Alleged False Statement #9: **“Botkin suggests closing Givins [sic] to community uses.”** Cris Gears, Director of Kitsap County Parks and Recreation, stated that in 2002, two letters were produced and distributed to Givens Community Center facilities users regarding possible changes to the uses of Givens Community Center as a result of Kitsap County budgetary issues. The first letter informed users of the Givens facilities that Kitsap County was making changes to reduce operational budgets that may affect those that used the facility. Because of the confusion about the future of Givens Community Center, a second letter was sent by the Parks Department. The second letter informed Givens users that the first letter was intended to provide information about possible changes by consolidating Kitsap County Parks and Recreation staff with other Kitsap County staff.

While the statement does not appear to be true based on Mr. Botkin’s statements, it does not appear that it was made with actual malice. The evidence reviewed indicated that Mr. Botkin was in favor of keeping Givens open, but because of the confusion, a second letter went out clarifying that the County was going to keep Givens open. Because Mr. Botkin was part of the county that was dealing with the issue, it was Mr. Svardh’s belief and opinion that the County and Mr. Botkin had suggested closing Givens.

There is not clear and convincing evidence that a false statement was made in violation of RCW 42.17.530.

You also alleged that the ADC and Michael Svardh violated RCW 42.17 by failing to timely file reports disclosing his reportable political advertising expenditures.

We found that Mr. Svardh used his own funds for all of his campaign expenditures. He disclosed these expenditures on three occasions using both PDC form C-6 (Report of Independent Expenditures) and PDC form C-4 (Report for Political Committees). These reports are available on the PDC website under “View the Reports.”

Mr. Svardh’s reports are summarized below:

<u>Report</u>	<u>Date</u>	<u>Type</u>	<u>Amount of Expenditures</u>
First	10/12/02	C-6	\$ 314
Second	10/30/02	C-4	\$ 3,519
Third	12/10/02	C-6	<u>\$ 312</u>
Total			\$ 4,145

The first two reports were timely filed. The third report was filed late. While it was due on November 4, 2002, it was not filed until December 10, 2002. However, it was a post election report, and the bulk of the campaign’s expenditures were reported timely. Thus, the lateness of the final report does not warrant enforcement action. We understand your confusion with the use of different forms. Mr. Svardh will be instructed to use the proper forms, depending on the circumstances, in future election efforts.

After a careful review of the alleged violations and relevant facts, and with the concurrence of the Chair of the Public Disclosure Commission, I am dismissing the allegations listed above that you filed against The American Dream Coalition and Michael Svardh.

If you have questions, please contact Phil Stutzman, Director of Compliance, at (360) 664-8853 or toll free at 1-877-601-2828.

Sincerely,

Vicki Rippie
Executive Director

c: Michael Svardh
John J. White Jr.